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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,326	01/26/2004	George S. Gabriel	364106/0348 SBP/JFD	9946

7590 11/08/2005  
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EXAMINER

VALENTI, ANDREA M

ART UNIT PAPER NUMBER

3643

DATE MAILED: 11/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/765,326	Applicant(s) GABRIEL ET AL.	
	Examiner Andrea M. Valenti	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,640,228 to Sedlacek in view of U.S. Patent No. 3,432,244 to Yates.

Regarding Claim 1, Sedlacek teaches a filter top for a cage (i.e. enclosure) (Sedlacek abstract), but is silent on a filter top lock for locking a cage level barrier cage such that an animal held within the cage cannot remove the top of the cage from a cage body.

However, Yates teaches an enclosure lock with a base member (Yates Fig. 3 #20); a releasable latch including a tab (Yates Fig. 4 #22 and 30); a foot substantially parallel to the tab (Yates Fig. 2 #24); and a shoulder (Yates Fig. 2 #31 and 33 and horizontal portion above these elements) wherein the latch (Yates #22) is integrally attached to the base (Yates #20) and when securing a top of the cage (Yates #15) to a cage body (Yates #10) the foot and shoulder of the lock are disposed in a locking position such that the shoulder is in contact with the top and the foot is proximate and below (Yates Fig. 2) a peripheral lip (Yates #12, 13, 14) of the cage body (Yates #10); the can be (this language is not a positively recitation of a structural limitation, but is

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"capable of" language that merely means that the device just has to be capable of performing the function) released by an operator by displacing the latch away from the base (Yates #22 is pulled away from #20 to both open and close the lock).

It would have been obvious to one of ordinary skill in the art to be motivated to modify the teachings of Sedlacek with the latching/locking means taught by Yates at the time of the inventions to securely hold the top and the cage together, but is easily removable by hand and is simple in construction as taught by Yates (Yates Col. 2 line 3-6) to further prevent dislodging which is a requirement taught by Sedlacek (Sedlacek Col. 2 line 55).

Regarding Claim 2, Sedlacek as modified teaches the lock is comprised of a durable and semi-rigid plastic (Yates Col. 2 line 31 and Col. 1 line 30-32).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1 and 2 have been considered but are moot in view of the new ground(s) of rejection.

Sedlacek teaches a container with a closure (i.e. lid). Yates teaches a container with a sealable closure, i.e. Yates relates to the container arts in particular reusable plastic closures for use with plastic and metal container (Yates Col. 1 line 30-32). Container locks/sealable closures of various configurations are old and notoriously well-known. Merely modifying a known container with a known lock/sealable closure is an obvious modification for one of ordinary skill in the art. Examiner maintains that applicant has not patentably distinguished over the teachings of the cited prior art.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 4,561,562; U.S. Patent No. 5,427,266; U.S. Patent No. 5,540,349; U.S. Patent No. 4,966,294.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti  
Patent Examiner  
Art Unit 3643

03 November 2005



Peter M. Poon  
Supervisory Patent Examiner  
Technology Center 3600